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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 482

UNITED STATES OF AMERICA, APPELLANT

v.

HORACE JOHNSON, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

FILED JUNE 13, 1967
PROBABLE JURISDICTION NOTED OCTOBER 23, 1967

Supreme Court of the United States

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[fol. 1]

RELEVANT DOCKET ENTRIES

Date	
February 16, 1967	Criminal Indictment in (1) count, filed.
	* * * *
March 2, 1967	ARRAIGNMENT RE ALL DEFTS: Plea of not guilty entered and filed.
	* * * *
March 14, 1967	RE ALL DEFTS: Motion to dismiss indictment, filed. Brief filed.
24, 1967	Govt's response to motion to dismiss, filed.
28, 1967	SUBMITTED TO JUDGE SMITH ON DEFTS' MOTION TO DISMISS.
	* * * *
May 16, 1967	Re ALL DEFTS: Order Dismissing the Indictment, filed. Copies mailed to Counsel.
	* * * *
June 13, 1967	Government's notice of appeal to the supreme court of the United States, filed. (Copies to Counsel and USSSC)

[fol. 2]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

* * * *

INDICTMENT—Returned February 16, 1967

THE GRAND JURY CHARGES:

COUNT ONE

That, on or about January 8, 1967, HORACE JOHNSON, JAMES RAYMOND HOGAN, WILLIE EVERETT HESTER, JR., and McCAGGER BAGWELL did, in Jackson County, Georgia, within the Northern District of Georgia, conspire together, with each other, and with other persons to the Grand Jury unknown, to injure, oppress, threaten, and intimidate Lester Hester, James Garland Sheats, and John Lewis Smith, Negro citizens of the United States, as well as other Negro citizens of the United States, in the free exercise and enjoyment by said Negro citizens of the right and privilege, secured to them by the laws of the United States, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accomodations of a restaurant, the 53 Truck Stop, Braselton, Jackson County, Georgia, a place of public accomodation as defined in Section 2000a, Title 42, United States Code, without discrimination or segregation on the ground of race, color, religion, or national origin;

[fol. 3] It was a part of the plan and purpose of the conspiracy that the conspirators would strike and beat Lester Hester, James Garland Sheats, and John Lewis Smith to discourage them and other Negro citizens from seeking service at the 53 Truck Stop on the same basis as white citizens.

All in violation of Section 241, Title 18 of the United States Code.

A TRUE BILL /s/ Royce Donald Fair
Foreman

/s/
CHARLES L. GOODSON
United States Attorney

[fol. 4] PLEA

I, *Horace Johnson*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ Horace Johnson
Defendant

/s/ Robert B. Thompson
Attorney for Defendant

PLEA

I, *James Raymond Hogan*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ James Raymond Hogan
Defendant

/s/ Robert B. Thompson
Attorney for Defendant

PLEA

I, *Willie Everett Hester, Jr.*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ Willie Everett Hester, Jr.
Defendant

/s/ Robert B. Thompson
Attorney for Defendant

[fol. 5] PLEA

I, *McCagger Bagwell*, Defendant, having received a copy of the within indictment and having waived arraignment, plead *Not Guilty* thereto.

In Open Court this *2d* day of *March, 1967*.

/s/ McCagger Bagwell
Defendant

/s/ Edward T. M. Garland
Attorney for Defendant

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

* * * *

MOTION TO DISMISS INDICTMENT—Filed March 14, 1967

Come now the above named defendants, by and through their counsel, and file this their motion to dismiss the captioned indictment and for cause therefor respectfully show:

1.

The indictment fails to charge an offense against these defendants which is a violation of the laws, statutes or the Constitution of the United States.

2.

The exclusive remedy of the United States for the vindication or enforcement of rights accorded persons, including Negro citizens, under the public accommodations section of the Civil Rights Act of 1964, Public Law 88-352, Title II, (42 U.S.C. 2000a, et seq., are remedies provided therein, and do not include prosecution under 18 U.S.C. 241; consequently, the indictment fails to charge an offense against these defendants, (42 U.S.C. 2000a-6).

[fol. 7] 3.

The undersigned counsel, Robert B. Thompson, is representing the defendant, Willie Everett Hester, Jr., for purposes of this motion only, it appearing that said counsel made a limited appearance for Hester at the arraignment, and is authorized by said defendant to pursue this motion.

/s/

ROBERT B. THOMPSON
Attorney for Horace Johnson, James Raymond Hogan and Willie Everett Hester, Jr.

P.O. Box 679
Gainesville, Georgia
Tel: 534-7341

/s/

EDWARD T. M. GARLAND
Attorney for McCagger Bagwell

229 Candler Building
Atlanta, Georgia

[Certificate of Service Omitted]

[fol. 8]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

* * * *

OPINION BELOW—May 15, 1967

In this case the defendants were indicted for conspiracy to violate the civil rights of certain named Negro citizens under 18 U.S.C.A. § 241.[1] The particular right and privilege allegedly violated was "the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a restaurant, the 53 Truck Stop, Braselton, Jackson County, Georgia, a place of public accommodation as defined in Section 2000a, Title 42, United States Code, without discrimination or segregation on the ground of race, color, religion, or national origin." No other right is involved than those imposed by the public accommodations section of the Civil Rights Act of 1964.

Defendants have filed a motion to dismiss on the grounds that (1) the indictment fails to state an offense and, correspondingly, (2) that the exclusive remedy prescribed by the Civil Rights Act under 42 U.S.C.A. 2000a-6 (b) prohibits the prosecution.

[fol. 9] As the violation of no other "civil right" than the public accommodations provisions of 42 U.S.C.A. § 2000 is alleged, the question is squarely presented as to whether the limitations of 42 U.S.C.A. § 2000a-6(b) foreclose the prosecutions under the general terms of 18 U.S.C.A. § 241. In a multi-violation indictment, determination of the issue was avoided in *United States* v. *Guest, et al*, 383 U. S. 745, 16 L. Ed. 239, even though the Dis-

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[1] "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

trict Court had inferred that such prosecutions were prohibited. *United States* v. *Guest*, 246 F. Supp. 475, 484.

The limitations of the Civil Rights Act of 1964 provides:

> "The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such rights." (42 U.S.C.A. 2000a-6 (b); § 207(b) of original Act.

While the conduct described by counsel is certainly of the type that ought to call for criminal penalties, it is concluded that the present law does not so provide and the motion to dismiss is good. Absent a contrary showing of congressional intent, the clear language of the above section is controlling.

The government argues that the prohibition applies only to the owners, operators, and employee-agents of such establishments as constitute a place of public accom- [fol. 10] modation under the act and a "direct" deprivation of the right at the lunch counter, registration desk, etc. Such reasoning, however, would permit the unjust result of insulating a shopkeeper from prosecution while subjecting his "co-conspirators" or "aiders and abetters" to criminal penalties. Thus, a wily owner could instigate a violation of this right, engage a group of hoodlums to carry it out, and yet be an exception to any penalty for his own wrongdoing.

There is no question that 18 U.S.C.A. § 241 has been given a broad liberal construction in its almost 100 years of application. And, clearly, it protects all Federal rights, whether flowing from the Constitution or created by Act of Congress. *United States* v. *Mosley*, 238 U. S. 383, 387 (1945); *United States* v. *Price*, 383 U. S. 787 (1966).

However, here, we are concerned with the granting of a new federal right with a concurrent restriction as to prosecution. In the absence of § 207(b); or in the presence of a state statute or other federal statute establishing such right, there would be no hesitancy in holding that a prosecution in the proper forum could proceed. Thus, the public accommodation rights granted by Congress in the Act, are such as are covered by 18 U.S.C.A. § 241, unless the Congress clearly intended that such rights be excluded. As stated, the language of § 207(b) itself does so exclude whether the action is "direct" or "indirect".

A close examination of the legislative history of the bill, conducted with the assistance of counsel here, strengthens this conclusion. Thus, the prior quoted remarks of then Senator Humphrey:

[fol. 11] "The clause which reads that 'the remedies provided in this title shall be the exclusive means of enforcing the rights hereby created' is designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him. This language is necessary because otherwise it could be contended that a violation of these provisions would result in criminal liability under 18 U.S.C. 241 or 242, or in civil liability for damages under 42 U.S.C. 1983 or 1985. Thus, the first clause in section [207(b)] simply expresses the intention of Congress that the rights created by title II may be enforced only as provided in title II. . . . It does not limit enforcement of rights granted or created by other valid laws, whether State or Federal, even if they cover the same facility." (110 Congressional Record, page 9767, May 1, 1964)

and Senator Young:

"The prohibitions of title II would be enforced only by civil suits for an injunction. Neither criminal penalties nor the recovery of money damages would be involved." (110 Congressional Record, page 7384, April 9, 1964)

and Senator Magnuson:

> "Moreover, in every case, a judicial determination of coverage must be made prior to the entry of any order requiring the owner to stop discrimination. Thus, no one would become subject to any contempt sanctions—the only sanctions provided for in the act, until after it has been judicially determined that his establishment is subject to the act and he has been ordered by the Court to end this discrimination, and he has violated that Court order." (110 Congressional Record, page 7405, April 9, 1964)

Moreover, an express amendment to substitute direct criminal proceedings for the injunctive and contempt sanctions was soundly defeated. See Congressional Record, page 13647, June 12th, 1964. Nothing is found to indi- [fol. 12] cate an intent contrary to that expressed in the act itself. It is concluded that under Title II of the Civil Rights Act, "remedies are limited to civil actions for preventive relief". *Atlanta Motel* v. *United States*, 379 U.S. 241 at 248. Accordingly, this criminal prosecution is barred and the motion to dismiss is, therefore, granted.

IT IS SO ORDERED.

This the 15th day of May, 1967.

/s/

SIDNEY O. SMITH, JR.
United States District Judge

[fol. 13]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

* * * *

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 13, 1967

I.

Notice is hereby given that the United States of America, the Plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the indictment under 18 U.S.C., 241 entered in this action on May 15, 1967.

This appeal is taken pursuant to 18 U.S.C., 3731.

II.

The Clerk will please prepare a transcript of the record of this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the entire record in this case.

III.

The following question is presented by this appeal: Whether the District Court erred in holding that the indictment failed to state an offense because 42 U.S.C., 2000(a)-6(b) barred this prosecution brought under 18 U.S.C., 241.

This 13 day of June, 1967.

CHARLES L. GOODSON
United States Attorney

ROBERT L. SMITH
Assistant United States Attorney

[fol. 14]

SUPREME COURT OF THE UNITED STATES

No. 482, October Term, 1967

UNITED STATES, APPELLANT.

v.

HORACE JOHNSON, ET AL.

APPEAL from the United States District Court for the Northern District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 23, 1967

Mr. Justice Marshall took no part in the consideration or decision of this case.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 282629 423